

**U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
ENFORCEMENT AND REMOVAL OPERATIONS
ICE HEALTH SERVICE CORPS**

FORENSIC MENTAL HEALTH EVALUATIONS

IHSC Directive: 07-03

ERO Directive Number: 11807.2

Federal Enterprise Architecture Number: 306-112-002b

Effective Date: 4 Mar 2016

By Order of the Acting Assistant Director
Stewart D. Smith, DHSc/s/

- 1. PURPOSE:** The purpose of this issuance is to set forth the policies and procedures to assist the U.S. Immigration and Customs Enforcement (ICE) in obtaining forensic psychiatric evaluations for detainees and providing Post Order Custody Reviews (POCR) for especially dangerous detainees identified as not qualified for release due to their mental health condition.
- 2. APPLICABILITY:** This directive applies to all Immigration and Customs Enforcement (ICE) Health Service Corps (IHSC) personnel, including but not limited to, Public Health Service (PHS) officers and civil service employees supporting health care operations in ICE-owned or contracted detention facilities and to IHSC Headquarters (HQ) staff. This directive applies to contract personnel when supporting IHSC in detention facilities and at HQ. Federal contractors are responsible for the management and discipline of their employees supporting IHSC.

3. AUTHORITIES AND REFERENCES:

- 3-1.** Title 8, Code of Federal Regulations, section 235.3 ([8 CFR 235.3](#)), Inadmissible Aliens and Expedited Removal;
- 3-2.** Section 232 of the Immigration and Nationality Act (8 USC 1222), Detention of aliens for physical and mental examination;
- 3-3.** Title 8, Code of Federal Regulations, section 232 ([8 CFR 232](#)), Detention of Aliens for Physical and Mental Examination;
- 3-4.** Section 322 of the Public Health Service Act ([42 USC 249\(a\)](#)), Medical Care and Treatment of Quarantined and Detained Persons;
- 3-5.** Title 42, U.S. Code, Public Health Service Act, Section 252 ([42 USC 252](#)); Medical Examination of Aliens.

- 3-6. The Privacy Act of 1974, 5 USC § 552a, as applied in DHS Privacy Policy Memorandum: 2007-1, "DHS Privacy Policy Regarding Collection, Use, Retention, and Dissemination of Information on Non-U.S. Persons," (January 7, 2009).
4. **POLICY:** IHSC personnel do not conduct forensic evaluations on detainees in ICE custody. All forensic evaluations are conducted by a qualified and certified Behavioral Health Provider (BHP) not affiliated with ICE. The initial evaluation needs to be conducted by a forensic psychiatrist. A forensic psychiatrist is a provider who has completed a subspecialty in forensic psychiatry from an accredited program/university. It is highly recommended that this physician is board certification in forensic psychiatry. Forensic psychiatry is the application of psychiatry in courts of law for determination for commitment, competency, fitness to stand trial, and responsibility for crime.

This forensic psychiatric evaluation will be followed by annual evaluations. These annual evaluations can be completed either by a forensic psychiatrist or forensic psychologist. Forensic psychologists are not medical providers but must have a doctorate in clinical psychology and must have completed extensive training in forensic psychology from an accredited program/university. It is recommended that this provider have board certification in forensic psychology. IHSC facilitates the coordination of these evaluations performed by these providers. These forensic evaluations are performed to determine mental capacity to understand treatment decisions, understand immigration proceedings or to determine if a detainee is especially dangerous and ineligible for release to the community.

Forensic evaluations are conducted to support the following program:

Post Order Custody Review (POCR): The ICE ERO Post Order Custody Review (POCR) office at times requests IHSC to arrange forensic evaluations by outside forensic providers to assist in determining the appropriateness of continued detention of an ICE detainee pursuant to 8 CFR 241.14(f).

5. **PROCEDURES:** The Behavioral Health Unit (BHU) identifies the forensic BHP and coordinates the forensic assessment with the Health Service Administrator (HSA) of the facility where the detainee resides. During this coordination, the BHU advises the forensic BHP of the report format requirements outlined in section 5-2 of this document (applicable only to 8 CFR 241.14(f) cases).
- 5-1. **Forensic Psychiatric Evaluations for the POCR Program:** The ICE Case Management Unit initiates referrals for forensic examinations of detainees to the BHU.
- 5-2. **Required Items for Mental Health Evaluations:** The BHU instructs the Forensic BHP to include the following information in any completed forensic mental health evaluation:

- a. **Identifying Information:** Detainee's full name, alien number, date of evaluation, date of report, date of birth, gender, education level, date of entry into the U.S., date of entry into ICE custody, and immigration status.
- b. **Translation Service:** The name of the person providing translation services and his/her qualifying credentials if translation services are used. If translation services are not used, so state.
- c. **Statement of Evaluation's Purpose:** A statement that the forensic BHP explained to the detainee the reason for the evaluation and:
 - (1) Whether the detainee agreed to participate in the evaluation.
 - (2) That the detainee was advised that the evaluation is not confidential.
 - (3) That a written copy of the evaluation is shared with ICE through the Assistant Field Office Director (AFOD).
- d. **Records Reviewed.** All medical and legal documents are reviewed for this evaluation.
- e. **Criminal History.** The criminal history of the detainee is provided by ICE as a reference for the BHP.
- f. **Mental Health History:** All known reports of hospitalization/treatment and any previous psychological/psychiatric evaluations that have been completed on the detainee. Any past or present symptomatology/mental health conditions and treatment should be included.
- g. **Family and Social History:** Available information concerning the family of origin, family history of mental illness, marital status, work history, developmental and psycho-sexual history, military service, any legal considerations identified by ICE, repatriation stance and detention history.
- h. **Medical History:** Known medical problems, especially those problems impacting the mental status of the detainee are provided. Additionally, a catalog of current and past medications, known drug allergies and reactions, any history of traumatic brain injury, or any history of seizures.
- i. **History of Alcohol and Substance Use:** Summation of all alcohol and substance abuse/dependence and past treatment, if any.
- j. **Mental Status Examination:** The general appearance of the detainee at the time of the assessment, as well as behavior, mood/affect, orientation, stream of speech and thought, any special preoccupations, presence of delusions, hallucinations, thought content, judgment, insight, abstract

thinking, memory, presence of suicidal/homicidal ideas or intentions with estimation for potential of expressive violent behavior, and an estimate of general cognitive functioning. Include current emotional response to incarceration.

- k. **Other Observations:** A summary of the results of all psychological tests administered and any other pertinent information derived from the interview process.

Diagnosis: The BHP evaluating the detainee refers to and uses the most recent edition of the Diagnostic and Statistical Manual (DSM) in his or her evaluation.

- l. **Final Assessment:** It is a statement from the forensic provider stating his/her expert opinion of the patient's condition based on findings during the evaluation. It must include a risk assessment.

An addendum is required for all forensic evaluations completed for the purpose of 8 CFR 241.14(f). The addendum is entitled the "Final Mental Health Determination for Release". One of the following two options is selected for this addendum:

- (1) The following statement is used if appropriate: "Due to a medical condition or personality disorder and behavior associated with that disorder, the alien is likely/unlikely (select one for the written report) to engage in acts of violence in the future. "No conditions of release to ensure the safety of the public can be reasonably expected." (This statement is then followed by a recommendation of treatment the detainee requires if any while in continued detention).
- (2) The following statement is used if appropriate: "Due to a medical condition or personality disorder and behavior associated with that disorder, the alien is likely/unlikely (select one for the written report) to engage in acts of violence in the future. There are conditions of release that can be reasonably expected to ensure the safety of the public." If the forensic BHP finds that there are conditions of release, the appropriate existing conditions must be described. (Specifics of the conditions for release including the type, frequency, duration and setting of any out-patient recommended treatment.)

- 5-3. **Billing/Compensation for Forensic Mental Health Evaluations:** All consults and services requiring travel, either through personally owned vehicle (POV) or commercial transportation, shall require prior authorization by the Resource Management Unit (RMU). All travel arrangements must be in accordance with the Federal Travel Regulations. BHP's will submit an expense report, itemizing all expenses and provide receipts for reimbursement. In addition, the BHP will submit a claim form for services rendered (e.g., forensic evaluation and written documentation of results/report). IHSC utilizes the Veterans Affairs Financial

Services Center in Austin, TX to adjudicate and pay all medical claims.

6. **HISTORICAL NOTES:** This directive replaces 07-03 Psychiatric Evaluations, dated Nov 2011. There are changes in every section of the document and the title has been changed to Forensic Mental Health Evaluations.

7. **DEFINITIONS:**

Behavioral Health Unit – The Behavioral Health Unit is a unit under the Deputy Assistant Director of Clinical Service within IHSC. The Unit provides behavioral health services with a focus on meeting the best practice mental health standards to detainees in IHSC custody. The Behavioral Health Unit provides consultation on behavioral health issues, coordinates Post Order Custody Review (POCR) evaluations and any other services requested by ICE. (IHSC Operational Definition)

Health Services Administrator (HSA) – The HSA is the designated IHSC administrator at a facility who provides administrative and supervisory oversight of day to day operational activities at IHSC staffed medical facilities. (IHSC Operational Definition)

8. **APPLICABLE STANDARDS:** National Commission on Correctional Health Care; 2014 J-I-03 *Forensic Information*.
9. **PRIVACY AND RECORDKEEPING.** IHSC maintains detainee health records as provided in the Alien Health Records System of Records Notice, 80 Fed. Reg. 239 (January 5, 2015). ICE maintains individual detention and removal records as provided in the Immigration and Enforcement Operational Records (ENFORCE) System of Records, 80 Fed. Reg. 24269 (April 30, 2015).
10. **NO PRIVATE RIGHT STATEMENT.** This directive is an internal policy statement of IHSC. It is not intended to, and does not create any rights, privileges, or benefits, substantive or procedural, enforceable against the United States; its departments, agencies, or other entities; its officers or employees; or any other person.